IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28-2-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.404 of 2003
W.A.M.P.No.499 of 2003

Rameswaram Port Visai Padagu Meenavar Sangam
rep.by its President N.J.Bose,
Reg.No.32/1977,
35-D, Indira Nagar,
Rameswaram - 623 526. ... Appellant

Vs.

1. State of Tamil Nadu,
rep.by its Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat,
Chennai - 600 009.

2. The Deputy Director of Fisheries,
Madurai.

3. The Assistant Director of Fisheries (Sea Wealth),
North Car Street,
Rameswaram,
Ramanathapuram District. ... Respondents

Writ appeal filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.45498 of 2002 dated 19.12.2002, filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the 3rd Respondent from initiating any further action pursuant to his impugned notice bearing Na.Ka.No.114/E/2002 dt-23.11.2002 as confirmed by the 2nd Respondent in his proceedings bearing Na.ka.No.11161/A3/02 dt.2.12.2002 in so for as the 77 members of the petitioner sangam Concerned whose names were listed in the impugned notice.

For Appellant : Mr.K.Venkatasubbaraju

For Respondents : Mr.P.Subramanian,
Government Advocate

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J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order passed by the learned single Judge in W.P.No.45498 of 2002 dated 19.12.2002, wherein the learned single Judge dismissed the writ petition.

2. The brief facts necessary for disposal of this writ appeal are as follows.

(a) Appellant Rameswaran Port Visai Padagu Meenavar Sangam is a registered sangam espousing the cause of its members numbering about 1000, who are all possessing mechanised boats and doing fishing operations in the coastal towns in and around Rameswaram. The writ petition was filed on behalf of 77 members, whose names are listed in the impugned order in writ petition dated 23.11.2002.

(b) The appellant states that as per Section 5 of the Tamil Nadu Marine Fishing Regulation Act, 1983 (Tamil Nadu Act VIII of 1983), the respondents are empowered to regulate, restrict or prohibit fishing in the specified areas and as per sub-section (3) of section 5, fishing beyond three nautical miles from the coast line by the mechanised boats is prohibited and there is also time restrictions.

(c) According to the appellant, the State Government is empowered to regulate, restrict or prohibit fishing operations within its territorial waters, which extends to 12 nautical miles by way of notification and the members of the appellant sangam, while venturing in the sea, occasionally cross the International Boundary Line (hereinafter called 'IBL') as there is no demarcation of any such line and even if such line is there, it cannot be easily identified during the period of natural calamities like storms, Gale winds, frost, mist, under water current and lack of vision, etc.

(d) The State Government issued instructions on 6.7.1993 to all officials including the third respondent to prevent violations of IBL by Indian fishermen and discipline them over the issue in the interest of the security of the nation as well as safety of the fishermen. The first respondent imposed penalties on fishermen, who violates the IBL, which ranges from stern warning initially and with penalty starting from Rs.250/- to Rs.500/- and also cancellation of licence of the boat.

(e) Whenever the fishing vessels cross the IBL due to the above said reasons, on certain occasions, the fishermen are forced to land in the shores nearby to escape from the fury of nature in order to save their lives and also due to mechanical failures of the boats and sometimes rescued by the Indian Navy. Even for that alleged violations, penalties were imposed and therefore, the appellant Sangam submitted several representations for relaxing the stringent provisions with the first

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respondent and accordingly the first respondent issued G.O.Ms.NO.113 Animal Husbandry and Fisheries Department, dated 11.7.2000 enhancing the penalty by reducing the rigour of the violations.

(f) According to the appellant, penalties are imposed only to the fishermen and fishing boats, who crosses IBL, carrying excess quantity of fuel and contrabands and who are engaged in carrying refugees or indulging in other illegal activities, and the fishermen, who violates IBL unintentionally will not be harassed or subjected to penalty.

(g) The third respondent by the impugned order dated 23.11.2002 directed the appellant sangam to collect penalty as per G.O.Ms.No.113 Animal Husbandry and Fisheries Department dated 11.7.2000 from 77 members and if the same is not paid by the 77 members of the appellant sangam, they shall not be issued permit/token for fishing. Therefore, the appellant sangam filed appeal against the said order before the second respondent under section 14(1) of the Tamil Nadu Marine Fishing Regulation Act, 1983 on 27.11.2002. However, the same was also rejected stating that the order of the third respondent is not an appealable order and if the appellant is aggrieved it can file appeal before the Government only.

(h) Hence the appellant filed the above writ petition and the same having been dismissed on 19.12.2002, this writ appeal is preferred on the ground that as per G.O.Ms.No.113 dated 11.7.2000, no penalty can be levied for unintentional crossing of IBL and penalty can be imposed only against the fishermen, who carry contraband goods or carry refugees or engaged in illegal activities. It is also stated that the impugned order is a non-speaking order as to what kind of violation 77 members of the appellant sangam have involved and if the permit is denied to the members for fishing their livelihood will be affected. The appeal filed by the appellant before the second respondent is also in accordance with the statute and the second respondent is not justified in rejecting the appeal by directing to file appeal before the first respondent.

3. A counter affidavit is filed in the writ appeal by the respndents, wherein it is stated that Ramnad District is in close proximity with Srilankan waters and the fishermen at Rameswaram area were already warned about the need to conduct fishing within the Indian territorial waters and nobody engaged in fishing shall cross the IBL and such acts will be treated as violation of provisions of the Tamil Nadu Marine Fishing Regulation Act, 1983 and the Rules framed thereunder. It is also stated that eversince the internal surge in Srilanka, the fishing activities in the Srilankan area were prohibited by their Government, which has given an opportunity to the Indian fishermen to conduct fishing in and around Katcha Theevu area and in order to curb the activities of the Indian fishermen i.e., crossing of IBL, several instructions and warning were given not to cross the IBL. The Srilankan Government brought to the notice of the Government of Tamil Nadu that in gross violation, the Indian fishing trawlers are conducting fishing in Srilankan waters, which has resulted not only as threat to the coastal security, but also the risk

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of loss of lives of the fishermen due to firing upon the boats by Srilankan Navi. In spite of these things, fishermen continued fishing beyond IBL and thereafter only the Government imposed penalties through letter No.SR.III/35614/92, dated 6.7.1993, which was later modified through G.O.Ms.No.113 dated 10.7.2000 by increasing the amont of fine. The claim of the appellant that due to natural calamities there is possibility of crossing IBL can be proved only before the authorised Adjudication Officer and penalties are imposed to those who crosses IBL. The third respondent being an Adjudication Officer and vested with the powers of adjudication, it is for the appellant to file appeal before the appellate authority i.e., the Director of Fisheries.

4. Heard the learned counsel appearing for the appellant as well as learned Government Advocate appearing for the respondents.

5. The impugned order in the writ petition dated 23.11.2002 reads as follows,

"FISHERIES DEPARTMENT

From
Thiru R.Singamuthiah,B.Sc.,D.Fsc.
Assistant Director of
Fisheries (Sea Wealth)
Rameswaram.

To
Thiru N.J.Bose,
Rameswaram Port Visai
Padagu Meenavar Sangam,
Rameswaram.

Na.Ka.No.114/E/2002, dated 23-11-2002

Sir,

Sub: Fishing- Mechanised Boats- Fishing beyong I.B.L. - Fine Remittance requested - reg.

Ref: 1. Srilankan Navy's Fax No.445691 dated 08-11-2002.
2. D.O.Letter No.55549/C2/2002, dated 12.11.2002 from the Director, Chennai.

In continuation of the letter No.1 cited under reference informing that 77 Indian Fishing Boats fished in the Srilankan Waters on 4.11.2002, the Director, Chennai has asked to take suitable action under the letter No.2 cited under reference.

You are therefore, required to take suitable action for remittance of the fine amount in this office by 77 Mechanised Boats listed below for fishing beyond I.B.L. on 4.11.2002 and in default, you are informed the issue fishing permit tokens will be suspended to them.

The details of the boats are shown in the appendix.

(sd)Assistant Director of Fisheries

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(Sea Wealth) Rameswaram

Copy to all Mechanised Boats Associations."

It is an admitted fact that the third respondent herein is the Adjudication Officer under section 17 of the Tamil Nadu Marine and Fishing Regulation Act, 1983. Section 17 reads as follows,

> "17 (1) Where any authorised officer has reason to believe that any fishing vessel has not been provided with buoy, first aid box, equipment for communication and life saving and fire fighting appliances in conformity with the rules made under this Act or any fishing vessel is being or has been used in contravention of any of the provisions of this Act or any notification issued or rule made thereunder or any of the conditions of the licence granted under this Act, he shall make a report thereof to the adjudicating officer.
>
> (2) the adjudicating officer shall hold an enquiry into the matters mentioned in the report, in the prescribed manner, after giving all the parties concerned a reasonable opportunity of being heard."

The procedure to be followed by the Adjudicating Officer for conducting enquiry is provided under section 21 of the Act. Section 21 reads thus,

> "21. (1) The adjudicating officer and the appellate authority shall, while holding an enquiry, have all the powers of a civil court under the code of Civil Procedure, 1908 (Central Act V of 1908) while trying a suit, in respect of the following matters, namely:-
>
> (a) summoning and enforcing the attendance of witnesses;
>
> (b) requiring the discovery and production of any document;
>
> (c) requisitioning any public record or copy thereof from any court or office;
>
> (d) receiving evidence on affidavits; and
>
> (e) issuing commissions for the examination of witnesses or documents.
>
> (2) The adjudicating officer or the appellate authority shall while exercising any power under this Act, be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974)."

6. From the provisions extracted above, the third respondent is bound to hold an enquiry in the matter, after giving all parties concerned, a reasonable opportunity of being heard. How the enquiry/hearing should be conducted is also provided under section 21,

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wherein it is stated that the adjudicating officer or the appellate authority shall have all powers as a civil court under the code of civil procedure while trying a suit in respect of all matters. It is also seen from section 18 that if after an enquiry, the adjudicating officer found that anyone violates the provisions of the said act or any notification issued or rule made thereunder or any of the conditions of licence, can be imposed penalty. The person aggrieved i.e., a person against whom punishment is imposed, is entitled to file statutory appeal under section 19 of the Act. The appellate authority is defined under section 3(b) of the Act. Section 3(b) reads as follows,

> "3(b) "appellate authority" means any officer of the fisheries Department not below the rank of Deputy Director of fisheries, authorised by the Government, by notification to exercise the powers conferred on, and discharge the duties imposed upon the appellate authority under this Act, for such area as may be specified in the notification."

As per section 3(b), the appellate authority shall be an officer not below the rank of the Deputy Director of Fisheries, authorised by the notification of the Government. Suomotu revision is also provided to the appellate authority under section 20 of the Act.

7. Here in this case, the impugned order was passed by the third respondent on 23.11.2002, wherein a fax message from the Srilankan Navy dated 8.11.2002 and a D.O.letter dated 12.11.2002 from the Director were relied upon. Admittedly no adjudication/opportunity of hearing as contemplated under section 17 and 21 were given by the third respondent and straight away the appellant was directed to take suitable action for remittance of fine amount by 77 mechanised boat owners, who are members of the appellant sangam. Even the amount of fine to be remitted, is not mentioned. Hence it is clear that the third respondent has not only not applied his mind but also not followed the procedures as contemplated under section 17 and 21 of the Act.

8. The appellant challenged the order of the third respondent before the Deputy Director of Fisheries, who is the appellate authority, as defined udner section 3(b) of the Act. The learned counsel for the appellant submitted that the second respondent is authorised by the Government to entertain appeals. The same is not disputed by the learned Government Advocate. The second respondent, without considering the appeal as contemplated under section 21 of the Act, has chosen to reject the same with a direction to file appeal before the first respondent, which is also a statutory violation.

9. As the original order passed by the third respondent itself is bad in law due to non-issuance of notice without disclosing reasons, not conducting enquiry as contemplated under sections 17 and 21, we are of the view that the impugned order passed by the third respondent is unsustainable and the consequential rejection of appeal by the second respondent dated 2.12.2002 and the dismissal of the writ petition by the

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learned single Judge on 19.12.2002 are unsustainable. However, it is made clear that if the third respondent has reason to believe that the 77 fishermen have violated any of the provisions under the Act and Rules/notifications issued, it is open to the third respondent to proceed against the 77 members of the appellant sangam in accordance with the provisions contained under the Tamil Nadu Marine and Fishing Regulation Act, 1983 and pass fresh orders.

The writ appeal is allowed with the above observation. No costs. Connected miscellaneous petition is closed.

vr

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government, Animal Husbandry and Fisheries Department, Secretariat, Chennai - 600 009.

2. The Deputy Director of Fisheries, Madurai.

3. The Assistant Director of Fisheries (Sea Wealth), North Car Street,Rameswaram, Ramanathapuram District.

+1 cc to M/s.K.Venkatasubbaraju, Advocate Sr. No.12188.

+1 cc to The Government Pleader, Sr.No.12203.

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